

**United States Department of Labor
Employees' Compensation Appeals Board**

JERRY HINOSOSA, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
NATIONAL CEMETARY, Riverside, CA,
Employer**

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**Docket No. 05-200
Issued: April 7, 2005**

Appearances:

*Jerrell E. Woolridge, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 25, 2004 appellant, through his representative, filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 17, 2004 which denied his request for reconsideration. Because more than one year has elapsed between the last merit decision dated September 9, 2003 and the filing of this appeal on October 25, 2004, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly declined to reopen appellant's claim for further consideration of the merits on August 17, 2004.

FACTUAL HISTORY

On April 28, 2003 appellant, then a 44-year-old caretaker, filed a traumatic injury claim alleging on that date he sustained pain in his stomach and back after lifting a heavy base

weighing 100 pounds. The Office accepted appellant's claim for lumbar sprain and ventral hernia.

Appellant filed a second claim on May 14, 2003 alleging that he injured his left shoulder on April 28, 2003 when he fell after lifting the 100-pound base.

On June 6, 2003 the Office assigned appellant a case management nurse for medical management services. On June 16, 2003 the nurse contacted appellant, who advised that he did not want to be involved with medical management services.

In a letter dated June 17, 2003, the Office informed appellant that, if he refused to cooperate with nurse intervention services, this was equivalent to refusing to cooperate with vocational rehabilitation services and his compensation could be reduced to zero. On June 24, 2003 the nurse noted that appellant was still unwilling to sign the consent for medical management services.

On July 18, 2003 appellant filed a claim for compensation requesting wage-loss compensation from June 13 to September 2, 2003. The Office informed appellant that the medical evidence did not support that he was totally disabled during this period due to his accepted employment injuries and allowed 30 days for appellant to submit additional evidence.

The medical management nurse completed a report on July 6, 2003 and stated that appellant was cooperating fully. On September 8, 2003 the nurse reported that appellant's representative had instructed the attending physician and his staff not to share information with him. He placed the case in interrupted status.

By decision dated September 9, 2003, the Office denied appellant's claim for compensation beginning June 13, 2003 on the grounds that there was no medical evidence establishing that appellant was totally disabled to his accepted employment injuries.

In a second decision on September 9, 2003, the Office reduced appellant's compensation benefits to zero on the grounds that he refused to cooperate with nurse intervention services under section 8113(b) of Federal Employees' Compensation Act.¹

In a letter dated October 24, 2003, the Office requested additional factual and medical evidence regarding appellant's April 28, 2003 left shoulder claim. By decision dated December 10, 2003, the Office denied appellant's claim for a left shoulder injury.

On May 19, 2004 appellant, through his representative, requested reconsideration of the December 10, 2003 decision.² Appellant, through his representative, also requested reconsideration of a September 9, 2003 decision. Appellant's representative argued that the Office did not rely on appropriate legal authority in its decision reducing appellant's

¹ 5 U.S.C. § 8113(b).

² The Office has not issued a final decision addressing this request for reconsideration. Therefore, the Board may not consider this issue on appeal as it is an interlocutory position. 20 C.F.R. § 501.2(c).

compensation based on his refusal to cooperate with nurse management or vocational rehabilitation services. He cited to *Ruth E. Leavy*.³

By decision dated August 17, 2004, the Office denied appellant's request for reconsideration of the September 9, 2003 decision. The Office stated that appellant had not advanced a relevant legal argument in support of his request.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁴ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

In this case, appellant's representative advanced a relevant legal argument not previously considered by the Office. He contended that the Office improperly reduced appellant's compensation benefits to zero based on his refusal to cooperate with medical management services. He cited to the Board's decision in *Ruth E. Leavy*. In this case, the Board held a claimant's refusal to cooperate in the medical management plan of a nurse did not necessarily constitute a refusal to undergo vocational rehabilitation. The Board finds that appellant has advanced a relevant legal argument which is sufficient to require the Office to reopen his claim for further merit review.

CONCLUSION

The Board finds that appellant has advanced a relevant legal argument in support of his request for reconsideration. On remand, the Office should reopen appellant's claim for further consideration of the merits.

³ 55 ECAB ____ (Docket No. 03-1197, issued January 27, 2004).

⁴ 5 U.S.C. §§ 8101-8193, § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 17, 2004 is set aside and the case is remanded for a merit review of appellant's claim.

Issued: April 7, 2005
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member